

ST 00-0240-GIL 10/30/2000 CERTIFICATE OF REGISTRATION

The Department's regulations at 86 Ill. Adm. Code 700.340 provide that "[t]he term willful means a voluntary, conscious and intentional act on the part of the officer or employee. (This is a GIL).

October 30, 2000

Dear Mr. Xxxxx:

This letter is in response to your letter dated August 24, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

COMPANY requests a binding private letter ruling regarding Section 2, Question 14 on the Illinois Business Registration (Form NUC-1).

COMPANY is not under audit and would like to register with the Illinois Department of Revenue ('IDOR') for sales/use, income and employment taxes. COMPANY seeks a statement of the IDOR's position on an individual accepting personal responsibility for a corporation's filing of tax returns and payments of taxes due as required by 86 Il. Adm. Code 130.701(d).

Specifically, COMPANY would like the IDOR's definition/position on:

- the term 'willful,' as used in 35 ILCS 753/3-7(a);
- the limitation of liability, if any, if the individual is no longer employed by the company (assuming all required returns have been filed through his/her tenure);
- to whom does the liability fall, if the person who originally accepted the personal responsibility leaves; and
- what type of notice to the Department is required if the person who accepted responsibility intends to leave?

The IDOR has not previously ruled on this issue for COMPANY. Thank you for your assistance.

If you require any additional information please let me know.

Question 14 of Section 2 or Form NUC-1, Illinois Business Registration, is based upon Section 2a of the Retailers' Occupation Tax Act, 35 ILCS 120/2a, which provides in part that "[t]he application shall contain an acceptance of responsibility signed by the person or persons who will be responsible for filing returns and payment of taxes due under this Act."

The language of Question 14 is not meant to expand the personal liability of certain corporate officers or employees of a corporation who have the control, supervision, or responsibility for filing returns and making payment of taxes on behalf of the corporation. Rather, Question 14 must be read in conjunction with Section 3-7 of the Uniform Penalty and Interest Act, 35 ILCS 735/3-7 which states the following:

“(a) Any officer or employee of any taxpayer subject to the provisions of a tax administered by the Department who has the control, supervision or responsibility of filing returns and making payment of the amount of any trust tax imposed in accordance with that Act and who wilfully fails to file the return or make the payment to the Department or wilfully attempts in any other manner to evade or defeat the tax shall be personally liable for a penalty equal to the total amount of tax unpaid by the taxpayer including interest and penalties thereon.”

Questions 14 seeks to identify those persons who are responsible for filing returns and paying taxes. By signing Form NUC-1, these persons do not become personal guarantors of a corporation's tax liability under all circumstances. It is only if those persons are found to have wilfully failed to file returns or pay taxes that they can be held personally liable for amounts equal to the tax plus penalties and interest.

The Department's regulations at 86 Ill. Adm. Code 700.340 provide that “[t]he term willful means a voluntary, conscious and intentional act on the part of the officer or employee. It may consist of a voluntary, conscious and intentional failure to file the required return or make the payment to the Department or a voluntary, conscious and intentional attempt to take any other action to evade or defeat the tax.”

The Department should be notified in the event the person who has signed the personal responsibility statement leaves. The Department will then send a form requesting the new personal responsibility information and signature of the person assuming the responsibility.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Martha P. Mote
Associate Counsel

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Enc.